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ABSTRACT

This paper summarizes events leading to the interdistrict settlement of the St. Louis (Missouri) school desegregation case. Remarks are focused on four points: (1) an overview of the settlement process and rationale, (2) an explanation of the principal provisions, (3) a brief analysis of the implementation process, and (4) a discussion of the problem of incompletely implemented quality education programs for all-black schools. In May 1980, the District Court ordered the state, the city school board, and the Department of Justice to explore interdistrict remedies to address racial imbalances in St. Louis schools. At that time two-thirds of all black students (30,000) in the city schools were in all-black schools. Eventually, 15 out of 23 suburban districts agreed to voluntary participation. The chief opponent was the state, which was required to foot the costs for interdistrict transfer of students. The actual settlement had three components: provisions for voluntary interdistrict transfers, establishment of magnet schools, and improvement of educational quality and school facilities. So far, the voluntary program has provided 9,600 black students with desegregated education and may provide similar opportunities for 5,400 more children. The paper concludes with five recommendations and a warning that while unfulfilled promises concerning quality education, magnet schools, and capital improvements deny remedies to nearly 25,000 children in all-black city schools, the community invites harsh, judicially imposed solutions which it may avoid by acting voluntarily. (MLH)

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BALANCING THE SCALES: 200 YEARS AFTER THE CONSTITUTION

FUTURE DESIGNS FOR EDUCATIONAL EQUITY

Omni International Hotel
St. Louis, Missouri
January 28-30, 1987

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VOLUNTARY METROPOLITAN SCHOOL DESEGREGATION IN ST. LOUIS -- SUBSTANTIAL ACHIEVEMENTS AND UNFULFILLED PROMISES

Remarks Delivered By
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January 28, 1987

INTRODUCTION

This evening I am going to start with a brief summary of the events leading to the settlement of the interdistrict aspects of the St. Louis school desegregation case. I hope to pick up the narrative where President Foote left off, and with as little overlap as possible. I plan to focus my remarks on four points.

1. an overview of the settlement process and some comments, limited by confidentiality requirements, about the reasons why the case was settled;

2. an explanation of the principal provisions of the Settlement Agreement as adopted by the parties and modified and approved by the courts

3. a brief analysis of the implementation of the Settlement Agreement, which is now in its 4th year.

   a. The record here with respect to voluntary interdistrict student transfers from the city to suburban school districts and with respect to district-wide Quality Education programs is one of substantial achievement.

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b. Unfortunately, the special Quality Education programs for the all-black city schools have not been implemented completely, and the record with respect to magnet schools and capital improvements of city school facilities is one of unfulfilled promises and refusals to compromise.

4. The incomplete implementation of the special Quality Education programs for all-black schools, paralysis in the interdistrict magnet program, and the total failure of the capital improvements program threaten the final success of the Settlement Agreement.

a. More importantly, the unfulfilled promises about Quality Education, magnet schools, and capital improvements deny, depending on the standard of measurement, some 21,444 to 24,446 black children in all-black city schools the remedy contemplated by the Settlement Agreement.

b. Because some very significant promises have not yet been honored, some of my comments are critical, perhaps harsh, and I am going to close with some strong, perhaps unpopular, recommendations.

NARRATIVE - THE EVENTS LEADING TO THE INTERDISTRICT SETTLEMENT

1. As President Foote told you, the District Court recognized that its May 1980 order approving the intradistrict plan would leave some 30,000 black students (approximately 2/3 of all black students in the city schools) in all-black schools, and it ordered the State, the City Board, and the DOJ to explore interdistrict remedies.

a. In Paragraph 12(a), the court ordered these three parties to develop a "voluntary, cooperative plan of pupil exchanges" between the city and suburban schools.

b. In Paragraph 12(c), the court also ordered the three parties "[t]o develop and submit . . . a suggested plan of inter-district school desegregation necessary to eradicate

the remaining vestiges of government-imposed school segregation in the City of St. Louis and St. Louis County".

c. The two plans ordered by the court were quickly dubbed the 12a voluntary plan and the 12c mandatory plan.

2. As President Foote explained, he submitted a 12a plan to the court in the Spring 1981. Although the parties did not reach an agreement on this plan, it was the basis for an Order entered by Judge Hungate on July 2, 1981. This Order proposed a plan for voluntary student exchanges between city and suburban schools that would be funded by the State, and Judge Hungate invited the 23 suburban St. Louis school districts to participate.

3. In August 1981, after only 5 of the 23 suburban school districts agreed to participate in the court's 12a plan, Judge Hungate

a. stayed any interdistrict litigation against these 5 school districts for as long as they participated in good faith, and

b. With regard to the 18 non-participating districts, Judge Hungate took two steps toward a mandatory interdistrict remedy.

i. First, the court resumed the previously suspended consideration of mandatory interdistrict relief under Paragraph 12c by ordering the State, the City Board, and the United States to file 12c plans and by setting a hearing for these plans in March 1982.

ii. Second, the court approved the initiation of the

interdistrict school desegregation case by granting in part prior motions of the City Board and the NAACP to join the non-participating suburban school districts.

4. With the failure of the court's 12a plan to involve all of the suburban school districts and the shift to consideration of a mandatory interdistrict remedy either under Paragraph 12c or after litigation and findings of interdistrict violations, all hope of a voluntary settlement of this metropolitan school desegregation case seemed to be lost.

a. After entry of Judge Hungate's August 1981 Orders, questions about the court's power to impose a mandatory interdistrict plan occupied center stage during the Fall 1981 and Winter 1982.

b. The public's attention was riveted on the proposed 12c plans that called for

i. consolidation of the suburban districts with the city schools,

ii. a uniform tax rate, and

iii. mandatory reassignment of students between the city and suburban schools.

5. On February 25, 1982, The Eighth Circuit entered a Judgment on appeals from Judge Hungate's August 1981 Orders, and this Judgment set the framework for a final resolution of the interdistrict case. The Eighth Circuit's opinion settled three important points.

a. First, it settled the relationship between 12c plans and

the interdistrict litigation.

i. On the one hand,the Court held that 12c plans rested on the State's established intradistrict violation and were limited to measures that either had no direct effect on the suburban districts or involved only voluntary actions by the suburban districts. The Court suggested that under paragraph 12c, the district court could order the State

-to improve the quality of education in all-black city schools,

-to establish magnet schools in the city or in the suburban school districts with their consent, and

-to provide additional incentives for voluntary interdistrict student transfers.

ii. On the other hand, the Eighth Circuit held that mandatory interdistrict student transfers and school district consolidation could be ordered only after completion of the interdistrict litigation and on findings either that the suburban school districts had contributed to segregation in the city schools or that the State, through its control over the suburban schools, had contributed to city school segregation.

b. Second, the Eighth Circuit upheld Judge Hungate's voluntary 12a plan.

i. The Court held that the State must pay the costs of voluntary interdistrict student transfers.

ii. The Court also declined to interfere with Judge Hungate's orders staying the interdistrict litigation against the 5 suburban school districts participating in the 12a plan.

c. Finally, and most importantly, the Eighth Circuit implicitly held that the State was liable for the full costs of any voluntary interdistrict desegregation plan solely on the basis of its previously established INTRADISTRICT constitutional violation.

i. The Court upheld the State's duty to pay for voluntary interdistrict student transfers under the 12a plan and for magnet schools and interdistrict transfers under 12c plans on the basis of its intradistrict violation.

ii. The Court specifically held that the State, on the basis of its established responsibility for segregation of the city schools,"can be required to take those actions which will further the desegregation of the city schools EVEN IF THE ACTIONS REQUIRED WILL OCCUR OUTSIDE THE BOUNDARIES OF THE CITY SCHOOL DISTRICT".

iii. In short, the Court held that the State could be required to take actions both inside and OUTSIDE the city school district as a remedy for its intradistrict violation

iv. This last holding proved to be the KEY to the settlement.

6. At the beginning of the 1982-83 school year, the situation was as follows:

a. 15 of the 23 suburban school districts had agreed to participate in Judge Hungate's 12a voluntary plan, and the interdistrict litigation against them had been stayed.

b. Trial of the interdistrict case against the State and the 7 remaining suburban school districts was scheduled to begin on Valentine's Day, February 14, 1983, and

c. the district court had tentatively approved a 12c plan that suggested that school district consolidation and mandatory busing would be the remedy if liability was established.

7. Against this background, I published an article in the Fall 1982 arguing that the interdistrict desegregation case could be settled.

a. When Tad Foote proposed his EDUCATIONAL PLAN FOR VOLUNTARY, COOPERATIVE DESEGREGATION back in March 1981, the plan which was the template for Judge Hungate's 12a plan, the City Board, many suburban school districts, the DOJ, and representatives of the plaintiff class were close to an agreement on almost all of the non-financial issues of voluntary interdistrict desegregation.

b. The Eighth Circuit's ruling that the State of Missouri is liable for the costs of an interdistrict remedy for its intradistrict violation removed a major stumbling block to a negotiated settlement.

8. In October 1982 Judge Hungate called my cards and appointed me Special Master for the purpose of negotiating a settlement among the parties -- the original Liddell plaintiffs, the NAACP, the City Board, which was a defendant in the intradistrict case and a plaintiff in the interdistrict case, 23 suburban school districts, the state of Missouri, the DOJ, the City of St. Louis, and St. Louis County.

a. With the substantial cooperation of the lawyers, educators, and the parties, we negotiated a Settlement Agreement, which was submitted to the District Court on March 30, 1983.

b. On July 5, 1983, Judge Hungate approved it.

c. The Eighth Circuit upheld the Settlement, with a few modifications, on February 8, 1984, and the Supreme Court subsequently declined to review the case.

d. We are now in the middle of the 4th year of implementation.

THE SETTLEMENT PROCESS

1. For the first four months of my appointment from October 15, 1982 through February 13, 1983, I conducted what can be best be described as "shuttle diplomacy".

a. I met individually with all the parties to learn their positions and demands and to exchange ideas and proposals.

b. On Sunday February 13, on the eve of the interdistrict liability trial, I met throughout the day and long into the

night with most of the parties. At the 11th hour, I concluded that there was now sufficient movement to create a genuine possibility of settlement.

c. The next morning, Valentine's Day, immediately before the scheduled opening statements in the interdistrict liability trial against the State and the 7 suburban school districts not participating in the 12a plan, I asked Judge Hungate for a delay so that we could work out an agreement.

d. The court granted a one day postponement and directed that all the parties begin meeting with me in a room in the court house immediately.

e. I met with all the parties as a group for the first time that day, and we continued around the clock meetings for the next three days. The meetings were hectic, exhausting, and often contentious, but we hammered out an Agreement in Principle.

f. After the lawyers consulted with their clients and reported to the court their acceptance of the AIP, the court gave us 30 days to draft a final Settlement Agreement.

g. Although at times it appeared that our efforts would founder, the lawyers for the interdistrict plaintiffs -- Liddell, the NAACP, and the City Board -- and for the 23 suburban school districts ultimately succeeded in drafting a 75 page final Settlement Agreement.

i. With only a few exceptions, these lawyers deserve a great deal of credit and earned my admiration. Without

losing sight of their responsibilities to their clients, they thought in creative and innovative ways and managed to understand their clients' interests in light of the broader public interest of working out a settlement.

ii. Two lawyers, Ken Brostron for the City Board and Henry Menghini who represented two suburban districts, deserve special credit for working out some of the final compromises.

2. I am not at liberty to discuss the negotiations in detail, but I can suggest the basic reasons why the parties were willing to explore settlement.

a. From the plaintiffs' perspective, they had to consider the delay inherent in litigation, the risk that they could not prove liability, and the risk that even if they proved liability, the finding of constitutional violations would not be sufficient to support a comprehensive remedy including school district consolidation and substantial mandatory interdistrict student transfers.

b. From the defendant suburban school districts' perspective, they had to consider that if the case went to trial and they lost, Judge Hungate's tentatively approved 12c plan presaged school district consolidation and substantial mandatory transfers of white students into the predominantly black city schools.

c. Given these risks, the Liddell, NAACP, and City Board

plaintiffs and the 23 suburban school district defendants agreed that the Settlement Agreement -- which I will describe in a moment -- was a better alternative than trial.

d. As you probably know, some of the parties -- the DOJ, the City of St. Louis, and the State -- refused to join the Settlement. Although we sought their participation and agreement, we knew throughout the negotiations that their assent was not a prerequisite to approval and implementation of a final settlement.

i. The DOJ declined to endorse the Settlement Agreement completely when it was presented to the District Court. Throughout the negotiations, DOJ waffled --sometimes supportive of our effort, sometimes disruptive.

ii. The City of St. Louis actively opposed the Settlement Agreement. Although the Settlement Agreement provides substantial benefits for the children in city schools, the City apparently believed that the financing provisions of the SA would divert tax resources from the City's coffers to the school board's treasury.

iii. The State of Missouri was and is the principal opponent of the Settlement Agreement. Although the State initially played a constructive role in my shuttle negotiations, the State ultimately withdrew from active negotiation when it became apparent that the State would have to foot most of the bill for the

Settlement Agreement.

- We tried hard to persuade the State to join the Settlement Agreement, and if the State had joined, many of the problems of implementation could have been avoided or reduced.
- Unfortunately, but understandably, the State deemed the costs too high. As a political matter, it is easier to complain about costs imposed by a court order than it is to explain costs that appear to voters' eyes to have been assumed voluntarily by signing a settlement.
- Fortunately, the State's refusal to participate was not significant as a legal matter because the Eighth Circuit had held over a year before the Settlement was reached that the State could be required to take actions both inside and outside the city school district as a remedy for its intradistrict violation.

THE TERMS OF THE SETTLEMENT

The three principal components of the settlement are:

1. provisions for voluntary interdistrict student transfers,
2. the establishment of magnet schools, and
3. the improvement of the quality of education in the city schools and provisions for major capital improvements.

1. VOLUNTARY INTERDISTRICT STUDENT TRANSFERS

a. One preliminary, and crucial, point is that all interdistrict student transfers are voluntary.

b. The 16 suburban school districts with a black enrollment of less than 25% have an obligation under the Settlement to accept black transfer city students and either to increase minority enrollment by 15% or to achieve a minority enrollment of 25%, whichever is less.

i. The interdistrict litigation against these 16 districts is stayed for 5 years.

ii. Each one of these districts that achieves its 15% increase or 25% minority enrollment within 5 years receives a Final Judgment that it has satisfied its pupil desegregation obligations. The only continuing duties are to participate in the interdistrict transfer program and in student recruitment and to accept transfer students.

iii. If any one of these 16 districts fails to achieve its pupil desegregation goals within 5 years, then the Settlement Agreement contemplates

- further negotiations, and
- if these negotiations fail, the plaintiffs may renew the interdistrict litigation against any school district that has not achieved either a 15% increase or 25% minority enrollment. The

plaintiffs, however, must prove liability, and the remedy is limited -- the court may not order consolidation of school districts or an increase in minority enrollment in excess of 25%.

c. The other seven suburban school districts that had a minority enrollment in excess of 25% at the date of the settlement have no substantial interdistrict student transfer duties. Under the Settlement, they were entitled to a Final Judgment that they have satisfied their pupil desegregation obligations. Any school district with a minority enrollment greater than 25% but less than 50% must, however, participate in the recruitment process to facilitate transfer of their white students to city schools.

d. As modified by the Eighth Circuit, up to 15,000 black students in the city schools may eventually transfer to the predominantly white suburban schools. Although the Settlement provided for interdistrict transfers of black students from the four predominantly black suburban districts to the 16 predominantly white suburban districts, the Eighth Circuit disapproved the State's responsibility for inter-county transfers because they are "not geared to remedy the violation found within the city."

e. Under the Settlement Agreement, the State is required to reimburse a host district for the costs of educating transfer students (the fiscal incentive), and the State must pay all transportation costs. In the first three years, the

total cost to the State of these incentives and transportation, according to the most reliable figures available, has risen from $10.2 to $22.3 to $30.8 million dollars.

2. MAGNET SCHOOLS ARE THE SECOND PRINCIPAL COMPONENT OF THE SETTLEMENT.

a. The Settlement Agreement initially set an ambitious, and at least with the benefit of hindsight, unrealistic goal of up to 20,000 students in magnet schools. It provided that a minimum of 12,000 students would be served by city magnets and a maximum of 8,000 students might attend magnets in the suburban schools. As interpreted by the courts, the Settlement Agreement also provides that the State would pay the full capital and operating costs of the interdistrict magnets established under the Settlement.

b. This magnet component has been modified substantially by the Eighth Circuit.

i. The Court has imposed a 14,000 student cap on magnet school enrollment and allocated 8000 of these slots to the intradistrict magnet program, which is funded 50/50 by the State and the City Board, and the remaining 6000 slots to interdistrict magnets.

ii. The Eighth Circuit also eliminated the provision for State funding of magnets located in the suburban school districts.

iii. Both of these changes substantially reduced the

State's financial liability.

c. Notwithstanding these changes, the key provisions -- the establishment of interdistrict magnets in the city and 100% State funding -- remain in place.

i. City magnet schools are the primary means of attracting white students from the county to the predominantly black city school system.

ii. Absent full implementation, the burdens of desegregation fall chiefly on blacks who transfer interdistrict from the city to suburban schools. City magnet schools are necessary to provide equity in the burdens of transportation for desegregation.

3. QUALITY EDUCATION IS THE THIRD BASIC COMPONENT OF THE SETTLEMENT.

a. As approved with modifications by the Eighth Circuit, the Settlement Agreement contemplated that even after full implementation between 10,000 and 15,000 black students would remain in all black schools. For these students, the key component of the Settlement is the Quality Education package and the related provisions for capital improvements.

b. The Quality Education package of the Settlement Agreement provided for district-wide improvements in the quality of education, and it also called for additional compensatory and remedial programs in the all black schools. Even as reduced and limited by subsequent court orders, the Quality

Education component of the Settlement is both extensive and expensive.

i. The provisions for reduction of pupil/teacher ratios are perhaps the most important, and certainly the most visible, part of the QE package. In the 1982-83 school year immediately prior to the settlement, the pupil/teacher ratio in the city schools was at best 35/1, and it was probably higher in many schools.

- The Settlement Agreement called for a district-wide reduction either to State AAA standards (35/1 for high schools and 30/1 in lower schools) or to the county's average pupil/teacher ratio (which some thought was 25/1) if it was lower.
- The Settlement called for a further reduction in the pupil/teacher ratio in all-black schools to 20/1.

ii. District-wide quality education programs also included art, music, physical education, and other programs at State AAA standards, pre-school centers, all-day kindergarten, staff expansion, and planning programs.

iii. Special provisions for the all black schools were to include a broad array of compensatory and remedial programs.

c. In addition to the QE programs, the Settlement Agreement called for the restoration and modernization of city schools

which it fairly described a suffering from "rapid deterioration, extreme deferred maintenance, [and] general old age."

d. As approved by the courts, the costs of the quality education package and of capital improvements are shared by the State and the City Board on a 50/50 basis.

e. Although both the quality education and capital improvement programs are expensive, <u>they are necessary</u>.

i. They are necessary because they are <u>the remedy</u> for blacks who remain in the city schools, and especially for those who are in the all-black schools.

ii. The QE and capital improvements programs are necessary if the city magnet schools are to succeed in attracting white students from the suburban districts.

iii. These two programs are necessary if the city school system is to succeed in its efforts to provide quality education for <u>all</u> the students.

Before I turn to my analysis of the implementation of the Settlement and my recommendations, a <u>cautionary note</u> is in order. Criticism and proposals come relatively easily from a person who is no longer actively involved in the case, who is not charged with any of the difficult responsibilities of implementation, and who has a personal interest in the successful implementation of a plan in which he invested a great deal of time and effort. With that warning in mind, let me turn to the

IMPLEMENTATION OF THE SETTLEMENT AGREEMENT

1. VOLUNTARY INTERDISTRICT STUDENT TRANSFERS

Viewed from all perspectives and judged by almost any criteria, the voluntary interdistrict transfer program of city students to suburban schools is remarkably successful.

a. Judged by the number of interdistrict student transfers and by the level of integration achieved, the program is successful.

i. The number of black city students enrolled in suburban schools has grown from 2,294 in the first year, to 4,870 in the second year, to 6,877 in the third year, and to 9,683 as of the Fall of the 4th year of the Settlement Agreement. The number may now have grown to 9800 in the second semester of the 1986-87 school year.

ii. There are 117 schools in the 16 suburban school districts with obligations to accept black transfer students. Most of these schools have a minority enrollment between 10% and 25%, and only seven schools have a minority enrollment under 7%.

b. In terms of the suburban school districts' satisfaction of their pupil desegregation obligations, the voluntary interdistrict transfer program is also successful.

i. Eight districts have received Final Judgments that

they have satisfied their pupil desegregation obligations, and two have applications pending.

ii. Two districts are within easy striking range of their goals.

iii. The four remaining districts face the responsibility of increasing minority enrollment by a little less than to 2% to a little over 7%.

c. Most importantly, in terms of the treatment of transfer students, the interdistrict transfer program appears to be a success.

i. Although there is some reason for concern about a 14% withdrawal rate and although most of the evidence is impressionistic and anecdotal, black students who have transferred to suburban schools are well-received and fairly treated.

ii. Most of the suburban districts appear to have made a firm commitment to treat all students, including transfer students, on the same basis.

d. Transportation is the one area in which there are still some problems. After several years of substantial difficulties, there now seems to be agreement that the State is doing a good job of providing transportation both to regular school sessions and to "late" activities and weekend performances. Nevertheless, although the problem is being addressed, 28% of the black transfer students still have ride times of 1 hour or more.

e. The principal problem with the voluntary interdistrict student transfer program is that it is effectively a one-way system.

i. In contrast to the 9600 black students who are enrolled in county schools this school year, there were only 577 white county students enrolled as of October 10, 1986 in city schools in this, the fourth year of implementation.

ii. In short, in the fourth year of implementation, approximately 5.6% of the interdistrict transfer students are white and 94.3% are black.

iii. This disparity in the burdens of desegregation brings us to the second component of the Settlement Agreement: Magnet Schools.

2. MAGNET SCHOOLS

The failure of the Settlement Agreement to attract white voluntary transfer students from the county to the city schools is a function of both the failure of the magnet school provisions and the failure of the existing magnets to provide the high quality programs that they advertise.

a. There are seven interdistrict magnets, but four were created under the old 12a plan. The three interdistrict magnets established under the Settlement were started in the first two years, and no new magnets have been added in the third and fourth years of implementation. These seven

magnets have a total enrollment of only 2129 students this year, a total far short of the 6000 interdistrict magnet seats provided for by the Settlement as modified by the Eighth Circuit.

b. Of the 577 white county transfer students this year, approximately 536 are enrolled in city magnet schools. 400 are in intracity magnets, and 136 are in the seven interdistrict magnets. The intradistrict and interdistrict magnets enjoy, if that is the word, the same low rate of white county enrollment. In both types of magnets, white county students are only 14% of the student body.

There is no shortage of explanations -- some of them self-serving -- for the failure of the magnet school component of the Settlement Agreement. I am not in a position to pick among the competing allegations of guilt and to assign responsibility for the failures of the magnet school provisions of the Settlement, but there seems to be more than enough blame for all to share.

a. The State of Missouri is frequently accused of resolutely resisting by all possible means the creation of additional interdistrict magnets. Because the State must foot the full capital and operating costs of these schools which may each require some $6-$7 million dollars, foot-dragging by the State is certainly understandable, even if unacceptable.

b. The City Board is often accused of wanting too much. Because the State pays 100% of the costs of interdistrict magnets and 50% of the costs of intradistrict magnets and

both types of magnets attract white county students at exactly the same low 14% rate, some believe that the City Board is attempting to transfer its financial obligations to the State by seeking the creation of interdistrict magnets.

c. The dispute resolution procedures of the Settlement are apparently not equal to the task.

i. Many say the the Magnet Review Committee is ineffective.

ii. The courts' financial advisor is said by some to be unduly sympathetic to the State's financial concerns and insufficiently sympathetic with the intent of the settling parties to establish magnet schools.

iii. The district court is, at least in the eyes of some people, too tolerant of the constant, and often intemperate, bickering of the State and City Board.

iv. Other informed observers argue, in defense of the Magnet Review Committee, the financial advisor, and the court, that the delay in establishing interdistrict magnets is simply a function of the fact that given their lack of success in attracting county white students, magnet schools are not cost effective desegregation tools.

d. We may well have a chicken and egg problem here. We cannot know how effective city magnet schools can be in attracting county students until new programs are established in facilities that meet the standards of county

schools and unless the magnet schools are created in the overall context of a city school system that, by virtue of the quality education and capital improvement component of the Settlement, is attractive to county students and their parents.

e. In its Fall 1986 Liddell IX opinion, the Eighth Circuit has attempted to break the logjam.

i. The Court ordered an increase of 2000 in interdistrict magnet enrollment by the next school year and an increase to the 6000 authorized total by 1989-90. The Court also set a 40% white county student enrollment standard to be met by existing interdistrict magnets within two years and by new interdistrict magnets within three years.

ii. Given the rather dismal record of interdistrict magnets so far, these are tall orders: an increase from 536 to 2400 white county magnet students and an increase from 2129 to 6000 in total interdistrict magnet enrollment in just three years.

3. QUALITY EDUCATION AND CAPITAL IMPROVEMENTS

Although the capital improvement provisions of the Settlement Agreement have been a total failure, my sources are almost uniformly persuaded that there have been substantial improvements in the Quality of Education. It is very hard to determine

precisely how much of the quality education component of the Settlement has in fact been implemented, but one person close to the process estimates that some 65% to 75% of the quality education package has been implemented over the first four years. The accomplishments so far, however, appear to be concentrated in the district-wide programs, and most of the implementation problems are in the Settlement programs designed for the all black schools.

a. For example, it apears that the City Board has been very successful in reducing the pupil teacher ratio on a district-wide basis to levels at or below the State AAA standards of 35/1 for high schools and 30/1 for lower schools.

i. However, there has been little or no effort to lower the pupil/teacher ratio in the all-black schools below the district-wide average. An examination of the second and third year budgets shows no funds approved or spent for this purpose.

ii. In September 1986, the Eighth Circuit in Liddell IX ordered a reduction to a 24/1 ratio for this school year and a further reduction next year to the 20/1 ratio in all-black schools contemplated by the Settlement.

b. Consistent with the City Board's success in reducing the pupil/teacher ratio on a district-wide basis, one finds that other Settlement district-wide programs like all-day

kindergarten and restoration of Art, Music and Physical Education programs to AAA standards have been successful.

c. Nevertheless, the record with respect to Settlement programs for the all-black schools is not as good.

i. I have not been able to obtain any complete comparative analysis measuring the all-black schools' programs that have been implemented against the standard of the Settlement,but one analyst has described the situation as "severe under-implementation."

ii. Another, more charitable analyst acknowledges that some individual programs have not been implemented and that only portions of others have been implemented.

iii. One indication of the problems is underspending by the City Board of the funds approved for implementation of the special programs for the all-black schools.

- In the second year, the court approved $3,472,592, but the Board spent only 53%, or $1,831,892.

- In the third year, the court approved $5,249,200, but the Board spent only 61% of these funds.

d. The problems of implementing the quality education programs are frequently ascribed to the following process.

i. First, the State and the City Board fight over the question whether a particular program should be

implemented.

- The State is said to indulge in guerilla warfare tactics.
- The Board is described as attempting to shift its reponsibility for basic education costs to State-funded Quality Education programs.

ii. The district court approves less than the Board requested, perhaps as a function of the Board's record of underspending.

iii. Although the State pays the sums ordered by the Court, year end audits reveal incomplete implementation and underspending by the Board.

iv. The underspending is then explained, depending on your source, as a function of:

- the fact that court orders approving budgets come so late in the school year that it is difficult for the Board to plan and implement,
- City Board mismanagement,
- the City Board's lack of funds to meet its 50% share of the costs of QE programs, or
- the City Board's refusal to allocate limited funds needed in its judgment for district-wide educational programs to the special Settlement programs for the all-black schools.

v. This process is then repeated each year.

vi. In addition to these problems, some commentators

attribute, in part, the incomplete implementation of the special quality education programs for the all-black schools to insufficient monitoring by the Liddell plaintiffs and the NAACP, who both lack the necessary financial resources for this task.

e. Although the Quality Education programs of the Settlement, especially the district-wide provisions, have improved the city schools, the Settlement Agreement provisions for capital improvements are a complete failure.

i. Under court orders, capital improvements are funded by the State and the City Board on a 50/50 basis.

ii. Notwithstanding strong efforts, the City Board has been unable to obtain the requisite 2/3 voter approval of a bond issue necessary to fund its share of capital improvements.

iii. Although several bond issues proposed to implement the Settlement's capital improvements have been supported by the predominantly black north side, they have failed to garner adequate support on the predominantly white south side. Consequently, no capital improvements have been made.

iv. The district court just completed hearings in December on the financing of capital improvements, and an order is expected in February. If the court simply orders another bond issue, there is little reason to be optimistic -- no school bond issue has passed in the

City of St. Louis since 1962. Stronger action -- to be noted shortly -- will be necessary, and even if new, more vigorous approaches are successful, we are still two or three years away from starting on capital improvements.

THE FUTURE OF THE SETTLEMENT AGREEMENT: PROBLEMS, ACHIEVEMENTS, AND RECOMMENDATONS

A. THE PROBLEMS

1. When the Settlement Agreement was negotiated, there were approximately 30,000 black children in all-black schools in the City of St. Louis. Now, four years later and thanks primarily to the success of the voluntary interdistrict transfer program, this number has been reduced.

   a. There are 21,444 black students in all-black city schools if the measurement excludes kindergarten, special education, Soldan High School (78% black), and McKinley High School (81.4% black).

   b. The number increases to 24,446 if these students are included in the measurement.

2. Regardless of the standard of measurement, it is clear that there are still a large number of black children in all-black city schools. Given the incomplete implementation of Quality Education programs in the all-black schools, delays in establishing interdistrict magnets, and the total failure to make capital improvements, these children -- after nearly four years

of implementation -- are still being denied a full remedy for the violation of their constitutional right to a desegregated education. Significant promises of the Settlement Agreement have been broken.

3. Successful implementation of the Settlement Agreement's voluntary metropolitan desegregation plan is being held hostage by legal fights between the two primary constitutional wrongdoers -- the State and the City Board -- and by the failure to resolve funding problems.

4. In addition to these problems, there are "storm clouds" that threaten dismantling of both the intradistrict plan and the Settlement.

a. There is political pressure in the City of St.Louis to abandon the intradistrict plan.

b. It is widely assumed that the State of Missouri will attempt to escape its financial responsibilities under the Settlement after the fifth year of implementation.

i. The intradistrict plan and the Settlement have been expensive.

- Audited expenditures for the first and second years of the Settlement and recorded expenditures for the third year show that the combined costs of the intradistrict and Settlement plans were $42,735,510 in 1983-84, $77,470,085 in 1984-85, and $80,045,588 in 1985-86.

- The total cost for the combined intradistrict and

Settlement plans in the first three years is a little over 200 million dollars ($200,251,503).

- The State's share is $144,647,939; the City Board's share is $55,603,564.

ii. The Settlement Agreement imposed substantial financial responsibilities on the State on the basis of its proven intradistrict violation. It was not intended, however, to be a blank check drawn on the State's treasury. The State has every right, indeed a duty, to ensure that its funds are spent effectively to accomplish the ends of the Settlement.

c. The completion of the fifth year of the Settlement Agreement may provide the occasion, and high costs may provide the incentive, for the State to attempt to escape its duties.

d. The fifth year of implementation, however, has no independent legal significance with respect to the State's duty to comply with the Settlement.

e. After the fifth year, as well as before, the State will continue to have the right to require that its funds be spent effectively for the purposes of the Settlement, but it will also continue to have the duty to comply fully and in good faith with its responsibilities.

i. If full implementation of the Quality Education, Capital Improvement, and Magnet programs is not achieved within five years, the State, as well as the

City Board, must meet its responsibilities as soon thereafter as possible.

ii. The voluntary interdistrict transfer program is to continue for the foreseeable future until there is a finding of a unitary school system. Although there is now renewed interest in the never-settled question when a school system is unitary and the duty to desegregate ends, five years of interdistrict transfers do not constitute a "unitary" system. The State's duty to continue paying fiscal incentives and transportation costs for the voluntary interdistrict transfer program will continue.

B. THE ACHIEVEMENTS

1. Given the unfulfilled or broken promises of the Settlement and the storm clouds, it is important to remember both that the Settlement Agreement is a remarkable achievement and that it is worth saving by ensuring full implementation.

2. It is a remarkable achievement because St. Louis is the only major city in the country with a voluntary, interdistrict desegregation plan. More importantly, we achieved this goal through a process of compromise and consent. Other cities have resolved their differences through litigation and court orders.

3. It is worth saving because it has already worked and because if fully implemented it can provide a complete and effective remedy.

a. The voluntary interdistrict transfer program has already provided some 9600 black city students with desegregated education in suburban schools, and it may ultimately provide this opportunity for an additional 5400 children. If the interdistrict magnet component of the Settlement is implemented consistent with Liddell IX, an additional 2400 black students could be educated in desegregated city schools, and the burdens of desegregating city schools will be distributed more equitably between blacks and whites.

b. Black children in the city schools have been the beneficiaries of substantial improvements in the quality of education under the district-wide programs of the Settlement and, to an uncertain extent, under the special provisions for the all-black schools. If these special remedial and compensatory programs are promptly and fully implemented and if sorely needed capital improvements are made, then the children who remain in all-black schools will have a complete remedy.

4. One plaintiffs' lawyer recently told me that the key question in judging the success of the Settlement is whether a significant number of black city students are better off under the Settlement than if the case had been litigated. His answer for now is yes. If the Settlement is fully implemented, we can guarantee that the final answer will be yes.

C. RECOMMENDATIONS

1. If the Settlement Agreement is to be saved and to be judged finally a success, it must be fully implemented now. Prompt, complete implementation will require strong action and leadership from the court.

2. The court must cut through the morass of squabbling between the State and the City Board.

a. Arguments about the efficacy of interdistrict magnets must yield magnet schools that are a fair test of the city's ability to attract white county students.

b. The special remedial and compensatory programs for the all-black schools, and especially the reduced pupil/teacher ratio must be implemented.

c. If State or the City Board do not comply completely and in good faith, the court has the tools -- contempt and direct supervision -- to ensure compliance.

3. The court must resolve the problems of financing the Settlement Agreement.

a. If the City Board's resources are not adequate to fund its share of the desegregation remedy, then the court may have to consider ordering a tax increase.

b. If the failure of bond issues continues to prevent financing the City Board's share of capital improvements, the the court may have to consider invalidating the 2/3, supermajority requirement.

c. The court cannot continue to permit the voters to frustrate the duty of their agent, the City Board, to remedy

its constitutional wrong.

4. Such strong exercises of judicial power should not be necessary. As the Mayor's office recently reported, improvements in the quality of public education are a major key to the continued revitalization of our city.

5. The lesson we learned in negotiating the Settlement Agreement should be applied to filling its broken promises: a community that voluntarily fulfills its constitutional responsibilities through a process of compromise and consent can avoid harsh judicially-imposed solutions.

5. Nonetheless, now near the end of the fourth year of implementation, additional delay cannot be tolerated.

AFTERWORD

When the Settlement Agreement was approved, I expressed the hope that in a few short years it would become such an established, successful component of public education in metropolitan St. Louis that it would ignored for the most part by the press and forgotten by the lawyers. One component of the Settlement Agreement, voluntary interdistrict transfers from the city to the county, has come a long way toward that goal. I hope that in the next few years we can say the same thing about interdistrict magnets, quality education, and capital improvements.